

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

DANNY HORSLEY,

Petitioner, : Case No. 1:14-cv-504

- vs -

District Judge Susan J. Dlott
Magistrate Judge Michael R. Merz

TIMOTHY B. BUCHANAN, Warden,
Noble Correctional Institution,

:
Respondent.

ORDER ADOPTING REPORTS AND RECOMMENDATIONS

This habeas corpus case is before the Court on Petitioner's Objections (ECF Nos. 14, 17) to the Magistrate Judge's Report and Recommendations (ECF No. 12) and Supplemental Report and Recommendations (ECF No. 16).

As required by 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(3), the Court has reviewed the findings and conclusions of the Magistrate Judge and has considered de novo all of the filings in this case with particular attention to the issues as to which Petitioner has lodged objections. Having done so, the Court determines that the Magistrate Judge's recommendations should be adopted.

Horsley pleads two grounds for relief in habeas corpus, both raising Fourth Amendment grounds. The Magistrate Judge recommended dismissal on the basis of *Stone v. Powell*, 428 U.S. 465 (1976); *Riley v. Gray*, 674 F.2d 522 (6th Cir. 1982); and *Good v. Berghuis*, 729 F.3d 636 (6th Cir. 2013).

In his Supplemental Report and Recommendations after recommittal, the Magistrate Judge analyzed Petitioner's Objections as they related to what had been pled on direct appeal (by the same attorney who represents Horsley in these proceedings) and concluded that the Ohio Fourth District Court of Appeals had decided the appeal in the manner required by the Ohio Rules of Appellate Procedure and, in the course of doing so, had rejected Horsley's Fourth Amendment claims(s) on the merits. The Magistrate Judge also rejected Horsley's request for a certificate of appealability on the grounds that reasonable jurists would not disagree that *Good* is the controlling law and any request for change should be addressed to the Sixth Circuit.

Horsley's Objection to the Supplemental Report point out in some detail how he believes the Fourth District Court of Appeals "fell for the state's misdirection and addressed two different constitutional claims. . . ." (ECF No. 17, PageID 420). Be that as it may, the Fourth District plainly declined to grant Horsley relief on the merits of his Fourth Amendment claim(s).

Horsley also notes that the Sixth Circuit in deciding *Good* admitted that its own prior *Stone v. Powell* jurisprudence had been unclear and that the decision it made put it in conflict with other courts of appeal. But the question to be decided on issuance of a certificate of appealability from this Court is whether reasonable jurists would disagree with whether *Good* states that law and/or whether this Court has correctly applied it. The place to get resolution of a circuit conflict is in the Supreme Court, a point which would be appropriately made in applying to the circuit court for a certificate of appealability.

Horsley's Objections are **OVERRULED** and the Magistrate Judge's Reports and Recommendations are **ADOPTED**. The Petition herein is dismissed with prejudice. Because reasonable jurists would not disagree with this conclusion, Petitioner is denied a certificate of

appealability and the Court hereby certifies to the Sixth Circuit that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*.

September 3, 2015.

S/Susan J. Dlott

Susan J. Dlott
United States District Judge